

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





75-2083

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P/S

UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

UNITED STATES ex. rel. CHARLES  
ANGELO SPATARO,

Relator-Appellant

-v-

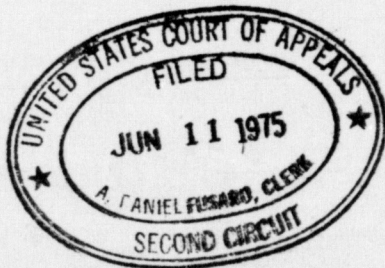
Docket No.  
75-8116

UNITED STATES MARSHAL FOR THE  
WESTERN DISTRICT OF NEW YORK,

Respondent-Appellee

JOINT APPENDIX

JAMES J. MICHALEK, ESQ.  
Attorney for Relator-Appellant  
561 Ridge Road  
Lackawanna, New York 14218



PACINATION AS IN ORIGINAL COPY



INDEX TO APPENDIX

<u>NO.</u>		<u>REFER TO IN</u> <u>INDEX TO</u> <u>RECORD AS NO.</u>
1.	Complaint of JOHN T. ELFVIN, United States Attorney, Western District of New York. Dated October 24, 1974.	1
2.	Transcript of Proceedings held before the HONORABLE JOHN T. CURTIN, United States District Judge, in Part I, United States Court House, Buffalo, New York, on March 4, 1975. Cr. Docket Misc. Cr. 147.	5
3.	Certification of HENRY A. KISSINGER, Secretary of State, dated: October 16, 1974.	6
4.	Certificate to be attached to documentary evidence accompanying requisitions in the United States for extradition executed on October 10, 1974, by RONALD A. GAIDUL, General Consul of the United States of America for Canada	7
5.	Certificate of Authentication executed on September 5, 1974 by JOHN A. SCOLLIN, Assistant Deputy General for Canada.	8
6.	Certificate of HOWARD G. AZIA, dated: August 15, 1974.	9
7.	A Warrant for Arrest of CHARLES ANGELO SPATARO, dated: June 15, 1974.	10
8.	Affidavit of WILLIAM CECIL WESTLAKE, Director of Warkworth Institution, dated: August 29, 1974.	11
9.	Affidavit of PATRICK FRANCIS CAREY, Acting Chief, Sentences Administration for the Canadian Penitentiary Service of the Ministry of the Solicitor General of Canada, dated: August 21, 1974.	12

NO.

REFER TO IN  
INDEX TO  
RECORD AS NO.

10. Affidavit of GERARD DOUCET, Legal Counsel 13  
for the Ministry of the Solicitor General  
of Canada, dated: August 21, 1974.
11. Affidavit of LUCY A. HUMMER, legal Advisor 14  
for the Department of State, Washington,  
D.C. dated: March 3, 1975 at Washington,  
D.C. with attachments:
  - a) Diplomatic Note from the Embassy of  
Canada, dated: July 29, 1974.
  - b) United States - Canadian Extradition  
Agreements (Consolidated)
  - c) Certification of ROBERT S. INGERSOLL,  
Acting United States Secretary of  
State attesting LUCY A. HUMMER'S  
position, dated: Washington, D.C.  
March 6, 1975.
12. The HONORABLE JOHN T. CURTIN, District Court 15  
Judge for the Western District of New York's  
Findings of Fact, Conclusions of Law, Certi-  
ficate of Extradictability and Order of  
Commitment (Misc Cr. 147) dated: April  
3, 1975.
13. Petition of JAMES J. MICHALEK, ESQ., on be- 16  
half of the relator, for a Writ of Habeas  
Corpus and a Writ of Certiorari dated:  
Lackawanna, New York, April 10, 1975,  
Civ No. 75-136.
14. The HONORABLE JUDGE JOHN T. CURTIN, District 17  
Court Judge for the Western District of  
New York's Judgment and Order denying the  
Petition for Writ of Habeas Corpus and for  
a Writ of Certiorari dated: Buffalo, New York,  
April 28, 1975.



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

In the Matter of the Extradition :

of :

CHARLES ANGELO SPATARO, a fugitive :  
from the justice of Canada :

C O M P L A I N T

# 1

TO: HON. JOHN T. CURTIN, United States District Court Judge,  
Western District of New York

Your complainant, the United States Attorney  
for the Western District of New York, under oath deposes  
and says:

That, in the above matter, he acts for and in  
behalf of the government of Canada;

That he is informed, through diplomatic channels,  
that the said CHARLES ANGELO SPATARO is duly and legally  
charged with having committed and been convicted of and  
sentenced for the crime of arson in Canada and having  
escaped and been illegally at large while serving time  
pursuant to said sentence;

That the said CHARLES ANGELO SPATARO has fled  
outside the boundaries of Canada; that warrant for the  
arrest of the said CHARLES ANGELO SPATARO cannot be  
served in Canada; and that the said CHARLES ANGELO  
SPATARO has sought an asylum within the jurisdiction  
of the United States and may be found in the State of  
New York and the Western District of New York;

That the said crime of arson which the said  
CHARLES ANGELO SPATARO is charged with having committed  
in said foreign country is among the offenses enumerated

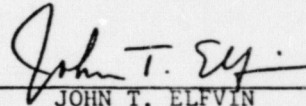
in Article X of the 1842 Webster-Ashburton treaty existing between the United States and Canada, 8 Stat. L. 572, which treaty still is in full force and effect; that the said Article X particularly refers to and includes the crime of arson;

That, through diplomatic channels, your complainant is informed and believes that the requisition for the herein-named fugitive, CHARLES ANGELO SPATARO, has been made in conformance with said treaty and other treaties in force and effect, accompanied by the formal papers upon which the demand for extradition is founded; that your complainant will have the formal extradition papers in his possession forthwith, the same having been mailed to your complainant from Washington, D.C. on October 23, 1974 by certified mail;

Whereupon, your petitioner, the complainant herein, acting under the authority and in the behalf stated, prays the consideration of this petition and that a warrant may issue for the arrest of the said CHARLES ANGELO SPATARO charged as aforesaid; that he may be brought before this Court to the end that evidence of criminality may be heard and, if on such hearing, this Court determines the evidence sufficient to sustain the charge under the provisions of said treaty and treaties, this Court shall certify the same to the Secretary of State of the United States at Washington, D.C. in order that warrant may issue upon the requisition of the proper authority of said foreign government for the surrender of the said CHARLES ANGELO SPATARO according to the stipulations of said treaty and treaties, and for such other action as this Court is required under the provisions of said treaty and



treaties and the laws of the United States to take.



JOHN T. ELFVIN  
United States Attorney,  
Western District of New York

Before me, a United States District Court Judge for the Western District of New York personally appeared in the Western District of New York the complainant, John T. Elfvin, the United States Attorney for the Western District of New York, on October 24, 1974 who, being duly sworn, says that the foregoing information is true, as he verily believes.

JOHN T. CURTIN

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF NEW YORK

3 \* \* \* \* \*

4 IN THE MATTER OF THE APPLICATION FOR  
EXTRADITION OF CHARLES ANGELO SPATARO

CRIMINAL DOCKET  
MISC. CR. 147

5 \* \* \* \* \*

#5

6  
7  
8  
9  
10 Proceedings held before the HON. JOHN T. CURTIN,  
11 United States District Judge, in Part I, United States Court  
12 House, Buffalo, New York, on March 4, 1975.

13  
14  
15 APPEARANCES:

RICHARD J. ARCAPA, United States Attorney,  
by RICHARD MELLENGER, Assistant United  
States Attorney.

16  
17 JAMES J. MICHALEK, Esq., Attorney for  
18 CHARLES ANGELO SPATARO.





INDEX OF EXHIBITS

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2	<i>1A</i> Certification of Henry A. Kissinger, Secretary of State, dated October 16, 1974 ✓	4	14
3	<i>1B 2</i> Certificate to be Attached to Documentary Evidence Accompanying Requisitions in the United States for Extradition executed on October 10, 1974, by Ronald A. Gaidul, General Consul of the United States of America for Canada ✓	4	14
7	<i>1C 3</i> Certificate of Authentication executed on September 5, 1974 by John A. Scollin, Assistant Deputy General for Canada ✓	4	14
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12	<i>1F 6</i> Affidavit of William Cecil Westlake, Director of Warkworth Institution, dated August 20, 1974 ✓	4	14
14	<i>1G 7</i> Affidavit of Patrick Francis Carey, Acting Chief, Sentences Administration for the Canadian Penitentiary Service of the Ministry of the Solicitor General of Canada, dated August 21, 1974 ✓	4	14
17	<i>1H 8</i> Affidavit of Gerard Doucet, Legal Counsel for the Ministry of the Solicitor General of Canada, dated August 21, 1974 ✓	4	14
19	9. <i>Long Hammer's aff.</i>		
20	10. <i>Dipl Note of July 29, 1974</i>		
21	11. <i>U.S. - Can Extra Agents conf.</i>		
22			
23			
24			
25			

*added after hearing*

1 THE COURT: In the Spataro matter.  
2 MR. MICHALEK: Your Honor, if there any other  
3 additional witnesses other than the first  
4 one, I would like them excluded from  
5 the courtroom.  
6 THE COURT: I don't think we are going to have  
7 to do that in this case. I see no reason  
8 for it at all. You only have what, one  
9 witness?  
10 MR. MELLENGER: One witness.  
11 THE COURT: Did you give Mr. Michalek the  
12 brief that you handed to me?  
13 MR. MELLENGER: No, I did not give him a copy.  
14 THE COURT: I think it would help the under-  
15 standing here if you did. I think, Mr.  
16 Michalek, we probably would go along a  
17 little smoother if I step off and you  
18 read that so you will understand what  
19 Mr. Spataro's position is and as we go  
20 on, you will be able to comment on it.  
21 We will take a recess.

22  
23 (Short recess taken.)  
24  
25



1 PROCEEDINGS: After short recess.

2 APPEARANCES: As before noted.

3

4 (Government Exhibits Numbered  
5 1A through 1H, respectively and in-  
6 clusive, marked for identification.)

7

8 THE COURT: Mr. Mellenger, are you ready to  
9 proceed?

10 MR. MELLENGER: Yes, your Honor, I am. The  
11 Government calls as its first witness,  
12 Leo McAuley.

13

14 L E O M c A U L E Y (RR 7, Brighton, Ontario, Canada), a  
15 witness called by and in behalf of the Government, having been  
16 first duly sworn, was examined and testified as follows:

17

18 DIRECT EXAMINATION BY MR. MELLENGER:

19 Q Mr. McAuley, where are you employed?

20 A Warkworth Institution.

21 Q And what is the Warkworth Institution?

22 A It is a Medium Security Federal Penitentiary.

23 Q You say a Federal Penitentiary. Is that for the  
24 Canadian Government?

25 A Yes, sir, it is.

1 Q And what is your position there?

2 A I am a Living Unit Supervisor.

3 MR. MICHALEX: Your Honor, I can't hear him. Can  
4 you speak a little louder?

5 THE COURT: Mr. McAuley, maybe if you will  
6 move up and speak up.

7 THE WITNESS: Living Unit Supervisor.

8  
9 BY MR. BELLENGER:

10 Q And could you explain the duties of a Living Unit  
11 Supervisor?

12 A Basically, I am in charge of one cell block which we  
13 describe as a living unit. I have twelve correctional  
14 officers that work for me plus two social workers and  
15 classification officers.

16 Q And do you also supervise any prisoners?

17 A Yes. We have, roughly, a hundred inmates.

18 Q And how long have you been a living unit supervisor  
19 at the Warkworth Institution?

20 A About two years now.

21 Q And during those two years, did you ever have a  
22 prisoner under your supervision by the name of Charles  
23 Angelo Spataro?

24 A Yes, I did.

25 Q And how long was he under your supervision?



1 A Roughly, fifteen or sixteen months.

2 Q And do you remember the approximate dates he was under  
3 your supervision?

4 A From March, I believe, '73, until he didn't come back  
5 in June of '74.

6 Q Okay. You said he didn't come back in June of '74.  
7 Would you describe to the Court how your supervision  
8 over this prisoner was terminated?

9 A Well, we have a temporary absence program which permits  
10 an inmate, if he earns it, to be absent from the  
11 institution for up to seventy-two hours. This particu-  
12 lar individual was granted a three-day temporary  
13 absence or seventy-two hour temporary absence and did  
14 not return.

15 Q And when was this?

16 A June of last year.

17 Q During the period this person Charles Angelo Spataro  
18 was under your supervision, did you ever have occasion  
19 to have personal contact with him?

20 A Oh, yes, sir.

21 Q Could you tell the Court approximately how many times?

22 A I couldn't say for sure. It would be hundreds of times  
23 we have talked, I suppose.

24 Q Do you see this individual Charles Angelo Spataro in  
25 this courtroom?

1 A Yes, I do. That is the gentleman sitting over there  
2 with his chin in his hand with the yellow shirt.

3 THE COURT: The man in the blue jacket and the  
4 yellow shirt?

5 THE WITNESS: Right. Yes, sir.

6 MR. MELLENGER: Your Honor, let the record show  
7 the witness was identified the fugitive  
8 Charles Angelo Spataro and I have no  
9 further questions, your Honor.

10 THE COURT: Mr. Michalek.

11 MR. MICHALEK: I have no questions, your Honor.

12 THE COURT: Mr. McAuley, you say there was  
13 about a hundred men in your unit?

14 THE WITNESS: Yes, your Honor.

15 THE COURT: How long was Mr. Spataro in the  
16 unit?

17 THE WITNESS: From March until June; about  
18 fifteen months, approximately.

19 THE COURT: And you would see him, - in other  
20 words, there were other officers assigned  
21 in the unit?

22 THE WITNESS: Yes, sir, there is twelve officers  
23 assigned to the unit.

24 THE COURT: I see. Now, where would your  
25 post of duty be, right in the area there,



1 or is it removed from the area where  
2 Mr. Spataro has his living quarters?

3 THE WITNESS: I have an office right in the  
4 unit and then we have another office  
5 removed from the unit, but a great deal  
6 of my time is spent in the living unit.

7 THE COURT: I see. You say that you would  
8 meet and talk to Spataro and other in-  
9 dividuals there about how often?

10 THE WITNESS: Many, many times. It would depend  
11 a lot on their position, like this  
12 inmate was a truckdriver; I could meet  
13 him either in the living unit or outside  
14 during his workday.

15 THE COURT: I see. Mr. Spataro was a truck-  
16 driver?

17 THE WITNESS: Yes, your Honor.

18 THE COURT: You would see him coming in and  
19 going out?

20 THE WITNESS: I would see him in the morning if  
21 I was in the living unit or lunchtime  
22 or if he wanted anything he would approach  
23 me.

24 THE COURT: Would he approach you or would he  
25 approach one of the other officers in

1 your unit?

2 THE WITNESS: Well, if he saw me, he would come  
3 to me or he could go through one of his  
4 own range officers.

5 THE COURT: Is there any question in your mind  
6 at all that this is that individual?

7 THE WITNESS: Absolutely not.

8 THE COURT: How do you come to that conclusion?

9 THE WITNESS: I've had a lot of personal contact  
10 with Charlie and this is necessary in  
11 order for him to be granted the temporary  
12 absences in the past. This is not some-  
13 thing that is given lightly. He has to  
14 earn it.

15 THE COURT: Before it was given, you thought  
16 that you were very well acquainted with  
17 him, is that what you are telling me?

18 THE WITNESS: Yes, your Honor. He had several  
19 temporary absences before and he always  
20 returned, no problem.

21 THE COURT: Any questions, Mr. Michalek?  
22 Thank you, Mr. McAuley. Maybe it would  
23 be a good idea if you stayed around for  
24 a while.

25 THE WITNESS: Okay. Thank you.



1 THE COURT:

Mr. Mellenger.

2 MR. MELLENGER:

Your Honor, there are a group of documents contained in the court clerk's file which are bound together by a seal and ribbon. These documents - -

6 THE COURT:

I will hand the file to you so you can describe them and Mr. Michalek can examine them.

9 MR. MELLENGER:

The first document in that group, your Honor, has been premarked as Exhibit 1A which is a certification of the United States Department of State that one Ronald A. Gaiduk was the general consul of the United States at Ottawa, Canada, when he executed what has been premarked as Exhibit 1B.

Exhibit 1B is a certificate to be attached to documentary evidence accompanying requisitions in the United States for extradition which has been executed by Mr. Gaiduk, General Consul of the United States at Ottawa, Canada. This certifies that the Government's Exhibits which have been premarked 1C through 1H are legally authenticated so

1 as to entitle them to be received in  
2 evidence in the courts of Canada. This  
3 certification is necessary for Exhibits  
4 1C through 1H to be admissible into  
5 evidence under Title 18, United States  
6 Code, Section 3190.

7 The next exhibit, your Honor, is  
8 Exhibit 1C which is a certificate of  
9 authentication executed on September 5,  
10 1974 by a John A. Scollin, who is the  
11 Assistant Deputy Attorney General for  
12 Canada. This document certifies as to  
13 the authenticity of Exhibits 1E, 1F, 1G  
14 and 1H. Exhibit 1D is the certification  
15 of Howard G. Aziz that Exhibit 1E which  
16 is the warrant of arrest for Charles  
17 Angelo Spataro is a true and accurate  
18 copy of the original.

19 Exhibit 1E is a copy of the  
20 warrant for the arrest of Charles Angelo  
21 Spataro relative to the extradition  
22 charges issued on June 15, 1974 by  
23 Howard G. Azis, Justice of the Peace  
24 of the Province of Ontario.

25 Exhibit 1F is the affidavit of



1 William Cecil Westlake, Director of the  
2 Warkworth Institution, dated August 20,  
3 1974 which identifies Charles Angelo  
4 Spataro as being a fugitive from the  
5 Warkworth Institution. This particular  
6 exhibit goes to establish that there are  
7 criminal charges pending against Spataro  
8 in Canada and also goes to establish  
9 the identity of the fugitive as being the  
10 same person who is now before the Court  
11 in that it identifies a photograph of  
12 Mr. Spataro, and this also goes to estab-  
13 lish that there is probable cause to be-  
14 lieve that the fugitive has committed the  
15 crime for which he has been charged.

16 Exhibit 1G, which is the affidavit  
17 of Patrick Francis Carey, who is the  
18 Acting Chief of Sentences Administration  
19 for the Canadian Penitentiary Service  
20 which shows that the fugitive has been  
21 sentenced to fourteen years incarceration  
22 and has not completed that sentence.

23 Exhibit A which is attached to that  
24 affidavit and made part of it is a copy  
25 of the certificate of sentence which

1                   hows that Spataro was convicted of  
2                   conspiracy to commit arson and also  
3                   attempted arson and that he received a  
4                   total sentence of fourteen years thereon  
5                   and this goes to establish the probable  
6                   cause to believe that the fugitive  
7                   committed the crime for which he is  
8                   being charged and that there are criminal  
9                   charges pending against the fugitive in  
10                  Canada, and finally, Exhibit 1H which  
11                  is the affidavit of Gerard Doucet, who  
12                  is the Legal Counsel for the Ministry  
13                  of the Solicitor General in Canada and  
14                  was executed on August 21, 1974. This  
15                  affidavit establishes that there are  
16                  no statute, - there is no statute of  
17                  limitations in respect to the sentences  
18                  imposed on Charles Angelo Spataro and  
19                  also that attempted arson and conspiracy  
20                  to commit arson are crimes in Canada.

21                  At this time, I would like to  
22                  move Government's Exhibits 1A through  
23                  1H into evidence, your Honor.

24                  THE COURT:

                  Mr. Michalek.

25                  MR. MICHALEK:

                  Yes, your Honor. I believe there



1 is a 1B exhibit. I don't see that  
2 contained herein. Is that 1R or 1B?  
3 MR. MELLENGER: 1B.  
4 MR. MICHALEK: Exhibit 1E seems to be a photocopy.  
5 Is the original warrant someplace?  
6 MR. MELLENGER: No, Exhibit 1D is an affidavit of  
7 the Justice of the Peace who issued that  
8 warrant and that certifies that the  
9 photocopy is a true and accurate copy  
10 of the original.  
11 MR. MICHALEK: One moment. I have no objection,  
12 your Honor.  
13 THE COURT: You do not have any objection to  
14 any of the documents?  
15 MR. MICHALEK: No, your Honor.  
16 THE COURT: The documents shall be received  
17 in evidence.  
18  
19 (Government Exhibits numbered 1A  
20 through 1H, respectively and inclusive,  
21 received in evidence.)  
22  
23 MR. MELLENGER: Your Honor, I would just like to  
24 make a few comments, your Honor. The  
25 applicable extradition treaties in force

1 relative to this case are what is known  
2 as the Webster-Ashburton Treaty of 1842,  
3 which can be found at 8 Statutes Large,  
4 Page 542, and also the convention between  
5 the United States and Great Britain of  
6 July 12, 1889, which can be found at  
7 26 Statutes Large, Page 1508.

8 Article 10 of the 1842 Treaty makes  
9 arson a crime for extradition and Article  
10 1 of the 1889 Treaty makes participation  
11 in arson a crime for which extradition  
12 may be had if such participation is  
13 punishable by the laws of both countries.

14 Also, Article 7 of the 1889 Treaty  
15 allows extradition of persons convicted  
16 of crimes for which extradition may be  
17 had and for which the sentence has not  
18 been executed and under the Federal Law  
19 of the United States, attempted arson  
20 is a crime under Title 18, United States  
21 Code, Section 81, under Title 18, United  
22 States Code, 371, it is a crime for two  
23 or more persons to conspire to commit  
24 an offense against the United States  
25 and under Title 18, United States Code,



1 Section 3290 there is no stature of  
2 limitations for fugitives from justice  
3 and the Government will rest at this  
4 time, your Honor.

5 THE COURT: Mr. Michalek, any evidence you  
6 have?

7 MR. MICHALEK: No, your Honor.

8 THE COURT: Any argument you want to offer now?

9 MR. MICHALEK: Yes, your Honor.

10 THE COURT: All right.

11 MR. MICHALEK: It is my understanding the  
12 Government has, in fact, rested.

13 THE COURT: Yes.

14 MR. MICHALEK: At the outset, your Honor, we would  
15 like to, - we have prepared a brief. We  
16 haven't completed it yet, but we would  
17 like to answer a brief as submitted by  
18 Mr. Mellenger.

19 THE COURT: All right. Do you want some time  
20 to file a written memorandum, but you  
21 want to put something in the record now?

22 MR. MICHALEK: Yes, your Honor. At the outset,  
23 your Honor, we move to dismiss the  
24 complaint based on the fact that the  
25 complaint, as it appears before the Court,

1 alleges the crime totally of arson. There  
2 is no comment in the complaint which is  
3 presently before this Court of anything  
4 relating to attempted arson or conspiracy  
5 to commit. This will bring the complaint  
6 immediately into defect, since it alleges  
7 solely the crime of arson, not commenting  
8 on the fact that it is attempted arson.

9 Secondly, in a hearing of this  
10 nature, besides jurisdiction which has  
11 been established, three elements have to  
12 be brought before the Court. One, that  
13 the crime charged is a listed offense in  
14 a valid existing treaty. Secondly, that  
15 this, in fact, is Charles Spataro; that  
16 both is in the papers and was convicted  
17 and also is the one that has allegedly  
18 left Canada. Third, where the alleged  
19 offense was committed and this, of  
20 course, is totaling lacking. Fourth, the  
21 fact that it has not been substantiated  
22 that the crime as charged, attempted  
23 arson as alleged in Canada, is, in fact,  
24 a crime in the United States. It has  
25 not been substantiated that, in fact,



1 that the crime that we are dealing with,  
2 attempted arson, falls within the con-  
3 fines of the treaty, the Ashburton, -  
4 Webster Ashburton Treaty and the corres-  
5 ponding changes that came thereafter.  
6 The people or the Government has the  
7 burden of establishing the fact by a  
8 preponderance or substantial evidence  
9 that he, in fact, is the Charles Spataro,  
10 the one that is in these papers, and two,  
11 that he is the person that escaped, the  
12 person that left Canada. I don't feel  
13 that that has been met by a tentative  
14 statement that they identify him as being  
15 there in the year 1973 to '74. For these  
16 reasons, and more particularly, the  
17 crime alleged in the complaint is arson.  
18 The material that has been brought before  
19 the Court relates to attempted arson.  
20 We feel that the complaint should be  
21 dismissed and secondarily, that if, in  
22 fact, the Court feels that attempted  
23 arson comes within the confines of arson  
24 we take the position that attempted arson  
25 is not an extraditable crime under the

1 case law and, in fact, a lesser included  
2 crime such as murder and manslaughter  
3 are not treated the same. Manslaughter  
4 would not be an extraditable crime and  
5 murder would be, and that is our initial  
6 argument at this time, your Honor, and  
7 we will submit a brief in further detail  
8 supplying the Court with cases and also  
9 going into the fact that the hearing and  
10 the responsibility of the people as to  
11 the three key elements have not been  
12 met.

13 THE COURT:

Mr. Michalek, when would you have  
that memorandum to me?

15 MR. MICHALEK:

Fairly soon, your Honor. I have  
done a great deal of research since the  
17 last time we had the preliminary hearing  
18 and I have got the - -

19 THE COURT:

A week from now?

20 MR. MICHALEK:

Yes, your Honor.

21 THE COURT:

Give a copy, of course, to Mr.  
22 Mellenger.

23 MR. MICHALEK:

Today is Tuesday. Are we talking  
24 next Wednesday or by no later than  
25 Friday of next week? That will be



1 about ten days.

2 THE COURT: Friday of next week.

3 MR. MICHALEK: Fine, your Honor.

4 THE COURT: Friday of next week. At that

5 time, we will consider it submitted.

6 At the same time, Mr. Mellenger - -

7 MR. MELLENGER: Yes, sir.

8 THE COURT: Would you submit to me, please,

9 your proposed findings of fact and con-

10 clusions of law?

11 MR. MELLENGER: I will, your Honor.

12 THE COURT: And the section provides that the

13 transcript is required so you will order

14 the transcript from Mr. Knisley, please.

15 MR. MELLENGER: Yes, your Honor.

16 THE COURT: Very well. Mr. Michalek, thank

17 you very much. Mr. Spataro, in the

18 meantime, you are remanded to the custody

19 of the Marshal.

20 MR. MICHALEK: Thank you, your Honor.

21 THE COURT: Do you need the clerk's file?

22 MR. MELLENGER: No, I don't, your Honor.

23 THE COURT: Can you hand that back up to me,

24 please. I handed it all down so it must

25 be on the table or mixed up with some

other papers.

MR. MELLENGER:

Thank you, your Honor.

\*\*\*\*\*

I hereby certify that the foregoing is a true and accurate stenographic report of the proceedings in the above entitled case.

*H. T. Noel*  
Official Reporter  
U.S. District Court

H. T. NOEL  
OFFICIAL REPORTER, U.S. DISTRICT COURT



No. 74/13037

# United States of America



#6

## DEPARTMENT OF STATE

all to whom these presents shall come, Greeting:

Certify That Ronald A. Gaiduk  
is subscribed to the paper hereto annexed, was at the time of subscribing the same,  
Consul General of the United States  
Ottawa, Canada duly commissioned; and that  
confidence are due to his acts as such.

In testimony whereof, I, Henry A. Kissinger,  
Secretary of State, have hereunto caused the seal of the Depart-  
ment of State to be affixed and my name subscribed by the Authent-  
ication Officer of the said Department, at the city of Washington, in  
the District of Columbia, this sixteenth  
day of October, 19 74

Henry A. Kissinger  
Secretary of State.  
By [Signature]  
Authentication Officer, Department of State.

Issued pursuant to RS 161,  
5 USC 158; Sec. 1 of Act  
62 Stat. 940, 28 USC 173;  
May 20, 1949, 63 Stat. 171,  
Serr. 104 and 332 of Act  
76 Stat. 176 and 253, 6 USC  
5 USC 140.

703,  
140,  
of  
and  
12,  
and

U.S. GOVERNMENT PRINTING OFFICE 16-31 49-7

FILED 7413037

OCT 29 3 55 AM '74

(Form No. 26- Foreign Service)

U.S. DISTRICT COURT  
N.Y.

Certificate to be Attached to Documentary Evidence Accompanying  
Requisitions in the United States for Extradition

#7

AMERICAN FOREIGN SERVICE

Ottawa, Canada; October 10, 1974

(Place and date)

I, Ronald A. Gaiduk, Consul General of

United States of America at Ottawa, Canada,

do hereby certify that the annexed papers, being documentation in support of  
extradition request made by the Government of Canada,

are to be used upon an application for the extradition from the United  
States of CHARLES ANGELO SPATARO, charged with

the crime of conspiracy to commit arson; attempt arson; possession of  
explosive substance with intent to cause serious damage to property,  
to have been committed in the Province of Ontario, Canada, are

legally authenticated so as to entitle them to be received in  
Canada for similar purposes by the tribunals of Canada

as required by the Act of Congress of August 3, 1882.

In witness whereof I hereunto sign my name and cause my seal of office

to be affixed this 10th day of October, 1974  
(Month and year)

  
Ronald A. Gaiduk

Consul General of the United States of America.



CERTIFICATE OF AUTHENTICATION

#8

In the matter of an application for the extradition  
of CHARLES ANGELO SPATARO

I, John A. Scollin, Assistant Deputy Attorney General  
for Canada at Ottawa, Ontario, do hereby certify:

THAT Howard G. Aziz is a Justice of the Peace  
in and for the Province of Ontario, having been duly  
appointed to that office, and is empowered to issue  
warrants for arrest pursuant to the Criminal Code of  
Canada, and that the warrant for arrest submitted in  
support of this application was signed Howard G. Aziz.

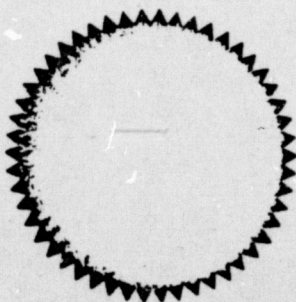
THAT Trevor Edwin Clarke, of the Province of Ontario,  
whose name is subscribed to the affidavit herein of  
William Cecil Westlake was, at the time of subscribing  
thereto, a Notary Public in and for the Province of  
Ontario, duly commissioned and duly authorised by the  
laws thereof to administer oaths and to take affidavits  
within the said Province.

THAT Richard Samuel Joliffe Davies, of the Province of  
Ontario, whose name is subscribed to the affidavits  
herein of Patrick Francis Carey and Gérard Doucet was,  
at the time of subscribing thereto, a Notary Public  
in and for the Province of Ontario, duly commissioned  
and duly authorised by the laws thereof to administer  
oaths and to take affidavits within the said Province.

DATED at Ottawa, Canada, this 5<sup>th</sup> day of September 1974.



John A. Scollin



15 August 1974

#9

I hereby certify that the attached document concerning, Charles Angelo SPARTARO is a true and accurate copy of the original.

*Howard G. Aziz*

Howard G. Aziz  
Justice of the Peace.



# WARRANT FOR ARREST

—MONTGOMERY P.I. 4472-246—

CANADA  
PROVINCE OF ONTARIO  
COUNTY OF

Northumberland

To the Peace Officers in the said County  
and in the Province of Ontario.

# 10

Charles Angelo SPARTARO

no fixed Address

mafter called the accused, has been charged that he, on or about the 15th day of June 1974,

in Township of Brighton in the said County,

was, before the expiration of a term of imprisonment to which he was  
sentenced at large within Canada or elsewhere without lawful excuse, contrary  
to the Criminal Code of Canada, section 133(B).

try to the Criminal Code.

whereas:

there are reasonable and probable grounds to believe that it is necessary in the public interest to issue this warrant for the  
arrest of the accused (455.3(4); 456.1(1));

the accused failed to attend court in accordance with the summons served upon him (456.1(2));

an (appearance notice or promise to appear or a recognizance entered into before an officer in charge) was confirmed and  
the accused failed to attend court in accordance therewith (456.1(2));

it appears that a summons cannot be served because the accused is evading service (456.1(2));

the accused was ordered to be present at the hearing of an application for a review of an order made by a justice and did  
not attend the hearing (457.5(5); 457.6(5));

there are reasonable and probable grounds to believe that the accused has violated or is about to violate the (promise to  
appear or undertaking or recognizance) upon which he was released (458(1); 459(5); 608(6));

there are reasonable and probable grounds to believe that the accused has since his release from custody on a (promise to  
appear or undertaking or recognizance) committed an indictable offence (458(1); 459(5); 608(6));

the accused was required by an (appearance notice or promise to appear or a recognizance entered into before an officer in  
charge or a summons) to attend at a time and place stated therein for the purposes of the Identification of Criminals Act  
and did not appear at that time and place (453.4; 455.6);

THIS IS, THEREFORE, to command you, in Her Majesty's name, forthwith to arrest the said accused and to bring him before  
Presiding Judge of the Provincial Court (Criminal Division) of the said County or before me or any justice in and  
the said County, to answer to the said charge and to be dealt with according to law.

ED this 15th day of June 1974,

in Village of Brighton

A Justice of the Peace in and for the said

Province

(County or Province)

trial applicable recital.)

For any case not covered by recitals 1 to 8, insert recital in the words of the statute authorizing the warrant.)

Delete whichever are inapplicable.)

41 1000 2 11/74





CANADA  
PROVINCE OF ONTARIO  
COUNTY OF  
CITY OF

) In the Matter of Extradition for the  
)  
) return of Charles Angelo Spataro from  
)  
the United States of America to Canada  
to serve his term of imprisonment on  
convictions of conspiracy to commit  
arson, attempt arson, possession of  
explosive substance with intent to  
cause serious damage to property under  
the Criminal Code of Canada.

#11

I, William Cecil Westlake, of Warkworth in the Province  
of Ontario make oath and say:

THAT I am the Director of Warkworth Institution, a  
penitentiary operated and administered by the Canadian  
Penitentiary Service.

THAT Charles Angelo Spataro was transferred to Warkworth  
Institution, in the Province of Ontario on or about March  
1st, 1973 to complete an aggregate sentence of fourteen years  
which had commenced to run on May 26, 1970, and continued to  
be an inmate at the said institution thereafter.

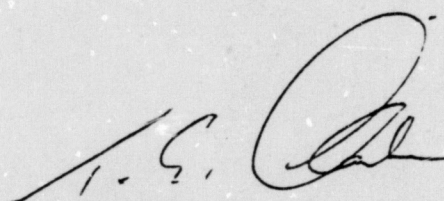
THAT, as Director of Warkworth Institution, I met Charles  
Angelo Spataro and that I identify the photograph of a man  
hereto annexed as Exhibit "A", as Charles Angelo Spataro.

THAT Charles Angelo Spataro received a temporary absence  
in accordance with Section 26 of the Penitentiary Act (R.S.C.  
1970, Chap. P-6) for a period of 3 days, commencing June 13,  
1974 and terminating June 16, 1974.

THAT Charles Angelo Spataro has failed to return to  
Warkworth Institution at the end of his temporary absence on  
June 16, 1974.

THAT information was laid with the Ontario Provincial  
Police, Division of Brighton, declaring Charles Angelo  
Spataro "Unlawfully at large" contrary to subsection 133(1)  
of the Criminal Code of Canada.

SWORN before me at *Windsor* )  
in the Province of Ontario, )  
this *20<sup>th</sup>* day of August, 1974. )

  
A Notary Public for the Province  
of Ontario.



THIS IS EXHIBIT "A" REFERRED TO IN THE  
FOREGOING AFFIDAVIT OF WILLIAM CECIL  
WESTLAKE SWORN BEFORE ME THIS 20<sup>th</sup>  
DAY OF AUGUST, 1974.



*H. G. Clark*  
.....  
A Notary Public for the  
Province of Ontario.

CANADA ) In the Matter of Extradition for the  
PROVINCE OF ONTARIO )  
COUNTY OF CARLETON ) return of Charles Angelo Spataro from  
CITY OF OTTAWA ) the United States of America to Canada  
to serve his term of imprisonment on  
convictions of conspiracy to commit  
arson, attempt arson, possession of  
explosive substance with intent to  
cause serious damage to property under  
the Criminal Code of Canada.

#12

I, Patrick Francis Carey, of the Municipality of Ottawa-Carleton, in the Province of Ontario, make oath and say:

THAT I am Acting Chief, Sentence Administration for the Canadian Penitentiary Service of the Ministry of the Solicitor General of Canada, and as such I am familiar with the computation of sentences.

THAT I have read the original Certificate of Sentence issued by the Clerk of the Court for the County of York, in Toronto, on the 26th of May 1970, a copy of which is hereto annexed as Exhibit "A" in respect of a number of sentences imposed on Charles Angelo Spataro by His Honour Judge W.M. Martin on May 26, 1970.

THAT Charles Angelo Spataro has an aggregate sentence of fourteen years (5,114 days) of imprisonment which was imposed on May 26th, 1970.

THAT Charles Angelo Spataro has served 1,482 days from the 26 of May, 1970 to June 15, 1974 on the aggregate sentence of fourteen years.



61

THAT Charles Angelo Spataro has received a total of 1,407 days of Statutory Remission and Earned Remission credited toward his aggregate sentence of fourteen years pursuant to Sections 22 and 24 of the Penitentiary Act (R.S.C. 1970, Chap. P-6).

THAT Charles Angelo Spataro has 2,225 days remaining to be served on his aggregate sentence of fourteen years.

SWORN before me at Ottawa,  
in the Province of Ontario,  
this 21 day of August, 1974. )

*Patrick Francis Casey*

*K. P. Davies*

A Notary Public for the Province  
of Ontario.

# GENERAL SESSIONS OF THE PEACE CERTIFICATE OF SENTENCE

4479c

THIS IS TO CERTIFY that at a sitting of this Court for the County of York, held at the City of Toronto the under mentioned prisoner, having been duly convicted of the offence(s) set opposite His name was sentenced as hereunder stated, by His Honour Judge W.R. MARTIN AS BY THE OFFICIAL MINUTES OF THE COURT APPEARS

EXHIBIT IV  
12 of 18

NAME OF PRISONER	OFFENCE	DATE OF SENTENCE	SENTENCE
SPATARO Charles A. Jr. THIS IS EXHIBIT "A" REFERRED TO IN THE FOREGOING AFFIDAVIT OF PATRICK FRANCIS CAREY SWORN BEFORE ME THIS 21 DAY OF AUGUST 1974.	<ol style="list-style-type: none"> <li>1. Conspiracy - conspired 26th May 1970 to commit the offence of Arson</li> <li>2. Attempt Arson</li> <li>3. Attempt Arson</li> <li>4. (With intent to destroy or damage-- (Place an explosive substance</li> <li>5. Possession of explosive substance with intent to cause serious damage to property.</li> </ol>		<ol style="list-style-type: none"> <li>1. Imprisonment for a term of fourteen (14) years..</li> <li>2. Imprisonment for a term of seven (7) years, concurrent.</li> <li>3. Imprisonment for a term of two and one-half years (2 1/2 years) concurrent.</li> <li>4. Imprisonment for a term of fourteen (14) years concurrent.</li> <li>5. Imprisonment for a term of fourteen (14) years concurrent.</li> </ol> <p>ALL above sentences to run concurrently. TOTAL SENTENCE -- 14 years. GIVEN UNDER MY HAND this 26th day of May 1970.</p>

NOTARY PUBLIC FOR THE PROVINCE OF ONTARIO.

S 118/70

Clerk of the Court at Toronto

*J. J. Hughes*



CANADA  
PROVINCE OF ONTARIO  
COUNTY OF CARLETON  
CITY OF OTTAWA

) In the Matter of Extradition for the  
) return of Charles Angelo Spataro from  
) the United States of America to Canada  
to serve his term of imprisonment on  
convictions of conspiracy to commit  
arson, attempt arson, possession of  
explosive substance with intent to  
cause serious damage to property under  
the Criminal Code of Canada.

#13

I, Gérard Doucet, of the Municipality of Ottawa-Carleton  
in the Province of Ontario, make oath and say:

THAT I am Legal Counsel for the Ministry of the Solicitor  
General of Canada, and as such I am familiar with the Criminal  
Law of Canada.

THAT the Criminal Code of Canada, being C-34 R.S.C. 1970,  
with amendments thereto, contains the law with regard to  
criminal offences for the whole of Canada and every province  
thereof, including the Province of Ontario and is at the  
present time in force in Canada and in the Province of Ontario.

THAT the Criminal Code of Canada embodies and contains  
the following provisions:

"ARSON - Fraudulently burning personal property.

389.(1) Every one who wilfully sets fire to

- (a) a building or structure, whether completed or not,
- (b) a stack of vegetable produce or of mineral or vegetable fuel,
- (c) a mine
- (d) a well of combustible substance,
- (e) a vessel or aircraft, whether completed or not,
- (f) timber or materials placed in a shipyard for building, repairing or fitting out a ship,
- (g) military or public stores or munitions of war,
- (h) a crop, whether standing or cut down, or
- (i) any wood, forest, or natural growth, or any lumber, timber, log, float, boom, dam or slide,

is guilty of an indictable offence and is liable to imprisonment for fourteen years.

- 389.(2) Every one who wilfully and for a fraudulent purpose sets fire to personal property not mentioned in subsection 389(1) is guilty of an indictable offence and is liable to imprisonment for five years. 1953-54, c. 51, s. 374.

#### ATTEMPTS

- 24.(1) Every one who, having an intent to commit an offence, does or omits to do anything for the purpose of carrying out his intention is guilty of an attempt to commit the offence whether or not it was possible under the circumstances to commit the offence.
- (2) The question whether an act or omission by a person who has an intent to commit an offence is or is not mere preparation to commit the offence, and to remote to constitute an attempt to commit the offence, is a question of law.

#### PUNISHMENT FOR ATTEMPTS.

##### Attempts, accessories.

421. Except where otherwise expressly provided by law, the following provisions apply in respect of persons who attempt to commit or are accessories after the fact to the commission of offences, namely,
- (a) every one who attempts to commit or is an accessory after the fact to the commission of an indictable offence for which, upon conviction, an accused is liable to be sentenced to death or to imprisonment for life, is guilty of an indictable offence and is liable to imprisonment for fourteen years;
  - (b) every one who attempts to commit or is an accessory after the fact to the commission of an indictable offence for which, upon conviction, an accused is liable to imprisonment for fourteen years or less, is guilty of an indictable offence and is liable to imprisonment for a term that is one-half of the longest term to which a person who is guilty of that offence is liable, and
  - (c) every one who attempts to commit or is an accessory after the fact to the commission of an offence punishable on summary conviction is guilty of an offence punishable on summary conviction. 1953-54, c. 51, s. 406.

#### CONSPIRACY AND PUNISHMENT FOR CONSPIRACY.

##### Conspiracy - Common law conspiracy.

- 423.(1) Except where otherwise expressly provided by law, the following provisions apply in respect of conspiracy, namely,
- (a) every one who conspires with any one to commit murder or to cause another person to be murdered, whether in Canada or not, is guilty of an indictable offence and is liable to imprisonment for fourteen years;



- (b) every one who conspires with any one to prosecute a person for an alleged offence, knowing that he did not commit that offence, is guilty of an indictable offence and is liable
    - (i) to imprisonment for ten years, if the alleged offence is one for which, upon conviction, that person would be liable to be sentenced to death or to imprisonment for life or for fourteen years, or
    - (ii) to imprisonment for five years, if the alleged offence is one for which, upon conviction, that person would be liable to imprisonment for less than fourteen years;
  - (c) every one who conspires with any one to induce, by false pretences, false representations or other fraudulent means, a woman to commit adultery or fornication, is guilty of an indictable offence and is liable to imprisonment for two years; and
  - (d) every one who conspires with any one to commit an indictable offence not provided for in paragraph (a), (b) or (c) is guilty of an indictable offence and is liable to the same punishment as that to which an accused who is guilty of that offence would, upon conviction, be liable.
- (2) Every one who conspires with any one
- (a) to effect an unlawful purpose, or
  - (b) to effect a lawful purpose by unlawful means,
- is guilty of an indictable offence and is liable to imprisonment for two years. 1953-54, c. 51, s. 408.

#### CAUSING INJURY WITH INTENT.

- 79.(1) Every one commits an offence who
- (a) does anything with intent to cause an explosion of an explosive substance that is likely to cause serious bodily harm or death to persons or is likely to cause serious damage to property,
  - (b) with intent to do bodily harm to any person
    - (i) causes an explosive substance to explode,
    - (ii) sends or delivers to a person or causes a person to take or receive an explosive substance or any other dangerous substance or thing,
    - (iii) places or throws anywhere or at or upon a person a corrosive fluid, explosive substance or any other dangerous substance or thing,
  - (c) with intent to destroy or damage property without lawful excuse, places or throws an explosive substance anywhere, or
  - (d) makes or has in his possession or has under his care or control any explosive substance with intent thereby
    - (i) to endanger life or to cause serious damage to property, or
    - (ii) to enable another person to endanger life or to cause serious damage to property.

- 79.(2) Every one who commits an offence under subsection (1) is guilty of an indictable offence and is liable
- (a) for an offence under paragraph (a) or (b), to imprisonment for life, or
  - (b) for an offence under paragraph (c) or (d), to imprisonment for fourteen years. 1953-54, c. 51, s

IMPRISONMENT FOR MORE THAN TWO YEARS.

- 659.(1) Except where otherwise provided, a person who is sentenced to imprisonment for
- (a) life,
  - (b) a term of two years or more, or
  - (c) two or more terms of less than two years each that are to be served one after the other and that, in the aggregate, amount to two years or more,
- shall be sentenced to imprisonment in a penitentiary.

UNLAWFULLY AT LARGE.

- 133.(1) Every one who
- (a) escapes from lawful custody, or
  - (b) is, before the expiration of a term of imprisonment to which he was sentenced, at large within Canada without lawful excuse, the proof of which lies upon him,
- is guilty of an indictable offence and is liable to imprisonment for two years. "

THAT I have read the original Certificate of Sentence, a copy of which is hereto annexed as Exhibit "A" respecting various sentences impose on Charles Angelo Spataro upon conviction of criminal offences proscribed in the Criminal Code of Canada.

THAT there is no Statutes of limitation in respect of the sentences imposed on Charles Angelo Spataro.

THAT Charles Angelo Spataro has been sentenced to an aggregate term of 14 years of imprisonment to be served in a penitentiary in Canada pursuant to subsection 659(1) of the Criminal Code.



THAT I have read the Affidavits of Patrick Francis Carey  
and William Cecil Westlake and it is my opinion, based on the  
facts alleged therein that Charles Angelo Spataro has committed  
the offence of being unlawfully at large contrary to Section  
133(1) of the Criminal Code.

SWORN before me at Ottawa,  
in the Province of Ontario,  
this 2/ day of August, 1974.

*Frederic Doucet*

*R. P. Davies*

A Notary Public for the Province  
of Ontario.

# CERTIFICATE OF SENTENCE

THIS IS TO CERTIFY that at a sitting of this Court for the County of York, held at the City of Toronto the under mentioned prisoner, having been duly convicted of the offence(s) set opposite 113 name was sentenced as hereunder stated, by His Honour Judge V. R. MARTIN AS BY THE OFFICIAL MINUTES OF THE COURT APPEARS

EXHIBIT IV  
18 of 18

NAME OF PRISONER	OFFENCE	DATE OF SENTENCE	SENTENCE
SPATARO Charles Angelo THIS IS EXHIBIT "A" REFERRED TO IN THE FOREGOING AFFIDAVIT OF PATRICK FRANCIS CAREY SWORN BEFORE ME THIS 21 DAY OF AUGUST, 1974	1. Conspiracy - conspired to commit the offence of Arson 2. Attempt Arson 3. Attempt Arson 4. (With intent to destroy or damage-- Place an explosive substance) 5. Possession of explosive substance with intent to cause serious damage to property.	26th May 1970	1. Imprisonment for a term of fourteen (14) years. 2. Imprisonment for a term of seven (7) years, concurrent. 3. Imprisonment for a term of two and one-half years; (2 1/2 years) concurrent. 4. Imprisonment for a term of fourteen (14) years concurrent. 5. Imprisonment for a term of fourteen (14) years concurrent. ALL above sentences to run concurrently. TOTAL SENTENCE -- 14 years. GIVEN UNDER MY HAND this 26th day of May 1970

Clerk of the Court at Toronto

S 118/70

*R. J. Davis*  
Notary Public in and for  
the Province of Ontario

44770



AFFIDAVIT

# 14

DISTRICT OF COLUMBIA, ss:

Before me, Irene Ingalls, a duly commissioned and qualified notary public, there personally appeared Lucy A. Hummer who, having been duly sworn, did depose and say that the following is true to the best of her knowledge:

1. I am an attorney-adviser in the Office of the Legal Adviser for the Department of State, Washington, D. C. I am assigned to the office having responsibility for extradition requests, and I have been charged with the extradition case of Charles Angelo Spataro.
2. In accordance with agreement between the United States and Canada, the Government of the United States provides legal representation in the United States courts for Canada in its extradition requests, and Canada provides legal representation in its courts for extradition requests made by the United States.
3. By diplomatic note of July 29, 1974, the Embassy of Canada requested the extradition of Charles Angelo Spataro for the offenses of conspiracy to commit arson and attempted arson. A copy of the diplomatic note is attached to this affidavit.
4. Arson is an extraditable offense in accordance with Article X of the Webster-Ashburton Treaty of 1842, and participation in the extraditable offense of arson is an extraditable offense in accordance with the Extradition Convention of 1889. Also

No. 75/2978

# United States of America



#14 (C)

## DEPARTMENT OF STATE

to whom these presents shall come, Greeting:

Certify That Lucy A. Hammer, whose name is subscribed to the  
ent hereunto annexed, was at the time of subscribing the same,  
y-Adviser, Office of the Legal Adviser, Department of State,  
States of America, and that full faith and credit are due to  
as such.

In testimony whereof, I, Robert S. Ingersoll,  
Acting Secretary of State, have hereunto caused the seal of the Depart-  
ment of State to be affixed and my name subscribed by the Authenti-  
cation Officer of the said Department, at the city of Washington, in  
the District of Columbia, this seventh  
day of March, 19 75.

Robert S. Ingersoll  
Acting Secretary of State.  
By Francis C. Sullivan  
Authentication Officer, Department of State.

Issued pursuant to  
203, 5 USC 158; Sec.  
1946, 42 Stat. 946, 28 L.  
of May 26, 1949, 61  
and Secs. 104 and 332  
66 Stat. 174 and 253, 8  
5 USC 146.

C. 22, RS  
June 25,  
4 of Act  
C. 151e;  
27, 1952  
443, and

certifica

valid if it is removed or altered in any way whatsoever

U.S. GOVERNMENT PRINTING OFFICE 16-60836-1



attached to this affidavit is a copy of the United States-  
Canadian extradition agreements, which are in full force  
and effect.

And Further deponent Saith not.

Lucy A. Hummer  
Lucy A. Hummer

Subscribed and sworn to before me this 3rd  
day of March, 1975 at Washington, D. C.

Irene Ingalls  
Irene Ingalls

My Commission Expires June 14, 1975

Canadian Embassy



Ambassade du Canada

*Let  
file*

No. 290

# 14 (a)

The Canadian Embassy presents its compliments to the Department of State and has the honour to request the extradition from the United States to Canada of one Charles Angelo Spataro, a citizen of the United States of America, who was born in Buffalo, New York, on April 8, 1933.

Mr. Spataro, who is believed to be residing at 403 - 14th Street, Buffalo, New York, was convicted May 26, 1970 at Toronto, Ontario, on charges of conspiracy to commit arson; two charges of attempted arson; possession of an explosive substance; and placing explosive substance with intent to destroy. He was sentenced to an aggregate of fourteen years imprisonment but he escaped from Warkworth Institution, Ontario and was declared to be unlawfully at large on June 16.

The description of Mr. Spataro is as follows: height five feet five and one half inches tall; weight one hundred and sixty four pounds; eyes brown; hair black and balding; swarthy complexion, scar on left neck and above left ear; hernia scar

... 2



on right groin.

The documents in support of this request will follow in a few days.

The Canadian Embassy avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

*MW*

Washington, D.C.,  
July 29, 1974.

UNITED STATES-CANADIAN EXTRADITION AGREEMENTS (CONSOLIDATED)

Art. X of Webster - Ashburton Treaty 1842

#14 (6)

It is agreed that the United States and Her Britannic Majesty shall, upon mutual requisitions by them, or their Ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum or shall be found within the territories of the other: Provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had there been committed; and the respective judges and other magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

Extradition Convention of 1869 (as supplemented).

Whereas by the Tenth Article of the Treaty concluded between the United States of America and Her Britannic Majesty on the ninth day of August, 1842, provision is made for the extradition of persons charged with certain crimes;

And Whereas it is now desired by the High Contracting Parties that the provisions of the said Article should embrace certain crimes not therein specified, and should extend to fugitives convicted of the crimes specified in the said Article and in this Convention;

The said High Contracting Parties have appointed as their Plenipotentiaries to conclude a Convention for this purpose, that is to say:

The



The President of the United States of America, James G. Blaine, Secretary of State of the United States;

And Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, Sir Julian Pauncefote, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Knight Commander of the Most Honorable Order of the Bath, and Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty to the United States;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:

Art. I

The provisions of the said Tenth Article are hereby made applicable to the following additional crimes:

1. Manslaughter, when voluntary.
2. Counterfeiting or altering money; uttering or bringing into circulation counterfeit or altered money.
3. Embezzlement; larceny; receiving any money, valuable security, or other property, knowing the same to have been embezzled, stolen, or fraudulently obtained.
4. Fraud by a bailee, banker, agent, factor, trustee, or director or member or officer of any company, made criminal by the laws of both countries.
5. Perjury, or subornation of perjury.
6. Rape; abduction; child-stealing; kidnapping.
7. Burglary; house-breaking or shop-breaking.
8. Piracy by the law of nations.
9. Revolt, or conspiracy to revolt by two or more persons on board a ship on the high seas, against the authority of the master; wrongfully sinking or destroying a vessel at sea, or attempting to do so; assaults on board a ship on the high seas, with intent to do grievous bodily harm.
10. Crimes and offenses against the laws of both countries for the suppression of slavery and slave-trading.
11. Obtaining money, valuable securities or other property by false pretenses.
- 11A. "Obtaining property, money or valuable securities by false pretences or by defrauding the public or any person by deceit or falsehood or other fraudulent means, whether such deceit or falsehood or any fraudulent means would or would not amount to a false pretence.
- 11B. "Making use of the mails in connection with schemes devised or intended to deceive or defraud the public or for the purpose of obtaining money under false pretences."

12. Wilful

12. Wilful and unlawful destruction or obstruction of railroads which endangers human life.

13. Procuring abortion.

14. Bribery, defined to be the offering, giving or receiving of bribes made criminal by the laws of both countries.

15. Offences, if made criminal by the laws of both countries, against bankruptcy law.

16. Wilful desertion or wilful non-support of minor or dependent children.

17. Crimes and offences against the laws for the suppression of the traffic in narcotics.

Extradition is also to take place for participation in any of the crimes mentioned in this Convention or in the aforesaid Tenth Article, provided such participation be punishable by the laws of both countries.

#### Art. II

A fugitive criminal shall not be surrendered, if the offense in respect of which his surrender is demanded be one of a political character, or if he proves that the requisition for his surrender has in fact been made with a view to try or punish him for an offense of a political character.

No person surrendered by either of the High Contracting Parties to the other shall be triable or tried, or be punished for any political crime or offense, or for any act connected herewith, committed previously to his extradition.

If any question shall arise as to whether a case comes within the provisions of this Article, the decision of the authorities of the government in whose jurisdiction the fugitive shall be at the time shall be final.

#### Art. III

No person surrendered by or to either of the High Contracting Parties shall be triable or be tried for any crime or offense, committed prior to his extradition, other than the offense for which he was surrendered, until he shall have had an opportunity of returning to the country from which he was surrendered.

#### Art. IV

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, whether being

the



the proceeds of the crime or offense charged, or being material as evidence in making proof of the crime or offense, shall, so far as practicable, and if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place. Nevertheless, the rights of third parties with regard to the articles aforesaid shall be duly respected.

Art. V

If the individual claimed by one of the two High Contracting Parties, in pursuance of the present Convention, should also be claimed by one or several other Powers on account of crimes or offenses committed within their respective jurisdictions, his extradition shall be granted to that state whose demand is first received.

The provisions of this Article, and also of Articles II to IV, inclusive, of the present Convention, shall apply to surrender for offenses specified in the aforesaid Tenth Article, as well as to surrender for offenses specified in this Convention.

Article VI

The extradition of fugitives under the provisions of this Convention and of the said Tenth Article shall be carried out in the United States and in Her Majesty's dominions, respectively, in conformity with the laws regulating extradition for the time being in force in the surrendering State.

Art. VII

The provisions of the said Tenth Article and of this Convention shall apply to persons convicted of the crimes therein respectively named and specified, whose sentence therefor shall not have been executed.

In case of a fugitive criminal alleged to have been convicted of the crime for which his surrender is asked, a copy of the record of the conviction and of the sentence of the court before which such conviction took place, duly authenticated, shall be produced, together with the evidence proving that the prisoner is the person to whom such sentence refers.

Art. VIII

Art. VIII

The present Convention shall not apply to any of the crimes herein specified which shall have been committed, or to any conviction which shall have been pronounced, prior to the date at which the Convention shall come into force.

Art. IX

This Convention shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

It shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties, and shall continue in force until one or the other of the High Contracting Parties shall signify its wish to terminate it, and no longer.

In witness whereof, the undersigned have signed the same and have affixed thereto their seals.

Done in duplicate at the city of Washington, this twelfth day of July, 1889.

Conveyance of Prisoners (Art. I, Treaty of 1908)

Any officer of the United States of America or of any state or territory thereof, having in his custody without the borders of Canada, by virtue of any warrant or any other lawful process issued by authority of the United States or of any state or territory thereof, any person charged with or convicted of any of the criminal offences specified below, committed within the jurisdiction of the United States or of any state or territory thereof, may, in executing such warrant or process, convey such person through any part of Canada to a place in the United States, if such warrant or process is endorsed, or backed, by a judge, magistrate or justice of the peace in Canada, or if the authority of the Minister of Justice of Canada for such conveyance is first obtained.

During such conveyance of such person through Canada, such officer may keep such person in his custody, and in case of escape may recapture him.

Any



Any officer of the Dominion of Canada or of any province or territory thereof, having in his custody without the borders of the United States of America, by virtue of any warrant or any other lawful process issued by authority of the law of the Dominion or of any province or territory thereof, any person charged with or convicted of any of the criminal offences specified below, committed in Canada, may, in executing such warrant or process, convey such person through any part of the United States to a place in Canada, if such warrant or process is endorsed, or backed, by a judge, magistrate or justice of the peace in the United States, or if the authority of the Secretary of State of the United States for such conveyance is first obtained.

During such conveyance of such person through the United States, such officer may keep such person in his custody, and in case of escape may recapture him.

The foregoing provision shall apply only to persons charged with or convicted of offences of the following descriptions:

1. Offences for which extradition is at the time authorized by a treaty in force between the United States and Great Britain.
2. Assault with intent to commit grievous bodily harm.
3. Assault upon an officer of the law in the execution of his duty.

The United States and the Dominion of Canada may by concurrent legislation make further or other regulations for authenticating the warrant or process under which the person in custody is to be conveyed, as before provided.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

#15

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In the Matter of the Extradition of

CHARLES ANGELO SPATARO,

MISC. CR. 147

A Fugitive from the Justice of Canada

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FINDINGS OF FACT, CONCLUSIONS OF  
LAW, CERTIFICATE OF EXTRADITABILITY  
and ORDER OF COMMITMENT

~~XXXXXXXXXX~~

CURTIN, DISTRICT JUDGE

EXHIBIT VII



Mr. Spataro was arraigned before me and at the request of his counsel, the hearing was adjourned until March 4, 1975. Counsel for both sides have filed proposed findings of fact and conclusions of law. In addition, the United States Attorney has requested that an affidavit of Lucy A. Hummer, Legal Advisor for the Department of State, Washington, D.C., which was received after March 4, 1975, be made part of the record. A copy of this affidavit has been sent to the attorney for Mr. Spataro. This affidavit shall be made part of the record in this proceeding.

Careful consideration was given to the documents admitted into evidence during the hearing and thereafter, the memoranda and argument of counsel, and the testimony taken at the hearing on March 4, 1975. The following constitutes findings of fact, conclusions of law, the certificate of extraditability and an order of commitment made pursuant to Title 18 U.S.C. § 3181, et seq.

In opposition to the grant of the order, the attorney for Mr. Spataro claims a variance between the charge in the complaint and the evidence presented at the hearing because the complaint charged that Mr. Spataro was convicted of arson, while in fact the evidence introduced at the hearing showed that he had been convicted of attempted arson and conspiracy to commit arson. Under the authority of Glucksman v. Henkel, 221 U.S. 508 (1910), this is a minor variance between the evidence and the complaint and not fatal to the extradition proceeding.

At the time of arraignment, I informed the Assistant United States Attorney that identification was a most important consideration and stated that the best evidence would be a fingerprint identification. At the hearing the United States Attorney introduced the affidavit of William Cecil Westlake, Director of Warkworth Institution, a Canadian penitentiary to which Mr. Spataro was transferred on March 1, 1973. Mr. Westlake



attached to his affidavit a photograph of Mr. Spataro taken while he was at the penitentiary. In addition, at the hearing the United States Attorney produced Leo McAuley, Living Unit Supervisor at Warkworth, who identified Mr. Spataro in court as the individual who is the subject of this extradition proceeding. I am satisfied from the evidence that Charles Angelo Spataro sought by Canadian authorities and the Charles Angelo Spataro arrested in this district for extradition and at present before the court are one and the same individual. Under the circumstance, after considering the affidavit and the testimony of Mr. McAuley, fingerprint identification was not required.

I have considered the other arguments made in the memorandum submitted by counsel for Mr. Spataro and conclude that they are not sufficient to defeat the application of the Government.

I find that there are extradition treaties in force between the United States and Canada, such treaties

being the Webster-Ashburton Treaty (1842) 8 Stat. L. 572 and the Convention between the United States and Great Britain of July 12, 1889, 26 Stat. L. 1508.

That Charles Angelo Spataro having been convicted of the crimes of attempted arson and conspiracy to commit arson has not had his sentence executed thereon and these charges are still pending. As a result there was a warrant issued for his arrest by competent Canadian authorities and this warrant is still outstanding.

The crime for which Charles Angelo Spataro has been charged is one for which extradition may be had under the treaties. More specifically, arson is listed as an extraditable offense in Article X of the Webster-Ashburton Treaty; that the Convention between the United States and Great Britain of July 12, 1889, is supplementary to Article X of the Webster-Ashburton Treaty; under Article I of the Convention of 1889, extradition is also to take place for participation in any of the crimes mentioned in the Convention or in the aforementioned Article X, provided such participation be punishable



by the laws of both countries; that the crimes of attempted arson and conspiracy to commit arson are felony offenses punishable by the laws of Canada and also felony offenses punishable under the criminal laws generally in force in this country; under Article VII of the Convention of 1889, the provisions of these two treaties are to apply to persons convicted of the crimes for which extradition may be had and whose sentence therefor shall not have been executed.

That the Charles Angelo Spataro sought by Canadian authorities and the Charles Angelo Spataro arrested in this District for extradition and brought before this court are one and the same individual.

That there is sufficient evidence before this court establishing probable cause to believe that Charles Angelo Spataro having been duly convicted of the crimes of attempted arson and conspiracy to commit arson in Canada, and being sentenced to fourteen years incarceration thereon was in the process of executing said sentence at the Warkworth Institution; that he was

granted a temporary absence by competent prison authorities from said institution; that he did not return from such temporary absence and as a result, his sentence has not been fully executed.

That the applicable statutes of limitations in Canada and in the United States have not expired.

That there is no evidence upon which an exemption to extradition can be based.

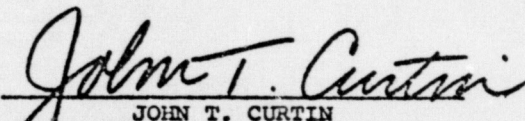
Therefore, I certify that I have found Charles Angelo Spataro extraditable to Canada and that I hereby order and commit him to the custody of the United States Marshal pending the issuance of an extradition warrant by the United States Secretary of State.

I further order that this Certificate of Extraditability and Order of Commitment, together with a copy of all the testimony presented in this case, and the formal extradition documents, be forwarded to the Secretary of State by the Clerk of this court.



- 8 -

So ordered.

  
JOHN T. CURTIN  
United States District Judge

DATED: April 3, 1975

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK : BUFFALO, NEW YORK

CHARLES ANGELO SPATARO

Petitioner

-VS-

PETITION FOR WRIT OF  
HABEAS CORPUS AND WRIT  
OF CERTIORARI

UNITED STATES MARSHALL for the Western District of New York  
Respondent

# 16

STATE OF NEW YORK)  
COUNTY OF ERIE )

ss:

JAMES J. MICHALEK, ESQ., attorney for the Petitioner  
CHARLES ANGELO SPATARO, on behalf of the petitioner respectfully  
shows:

- 1) The petitioner is a resident of the City of Buffalo, County of Erie and State of New York.
- 2) That on the 21st day of February, 1975, the petitioner was arrested and held in lieu of Fifty Thousand (\$50,000.00) Dollars cash bail and was arraigned before the HONORABLE JOHN T. CURTIN, United States District Court Judge, a warrant of extradition for attempted arson instituted by the United States Attorney for the Western District of New York on an alleged request from the Canadian Government.
- 3) That proceedings were held on the 4th day of March, 1975 in which the petitioner was sought for Extradition to Canada pursuant to Article 13 of the United States Code and the appropriate treaties with Canada. That the hearing was held before the HONORABLE JOHN T. CURTIN and said judge did render a decision after the closing of evidence.
- 4) That the only person produced before the judge was LEO MCAULEY, who testified that he recognized and could identify the petitioner as being the fugitive that was sought by the Canadian authorities. All other evidence was in the form of affidavits.

LAW OFFICES OF  
JAMES J. MICHALEK  
ICKAWANNA, N. Y.

EXHIBIT VIII



5) That on the 3rd day of April, 1975, the HONORABLE JOHN T. CURTIN did render his decision certifying the Extradition of the Petitioner and ordered his commitment to the United States Marshall pending the issue of an Extradition Warrant by the United States Secretary of State.

6) That the petitioner is now in the custody of the United States Marshall for the Western District of New York without bail and is being restrained of his liberty and petitioner actually is imprisoned; that such restraint, detention and imprisonment of the petitioner are illegal and void and without warrant of law and that the petitioner is being held in violation of his constitutional rights.

7) That the offense charged the petitioner is not within a treaty with Canada. That attempted arson is not one of the crimes listed in the treaty with Canada and formerly with Great Britain. That because the crime charged is not within the treaty the petitioner is being wrongfully detained.

8) In addition thereto, there was no competent legal evidence shown to warrant a finding of a reasonable ground to believe that the petitioner was guilty of the acts charged. That the petitioner was never properly identified as the fugitive mentioned in the extradition papers. That the Assistant United States Attorney never proved that a crime was committed in Canada and material papers used as evidence were legally defective.

9) That findings of fact of these proceedings stated that a warrant of arrest was outstanding for the fugitive in Canada. That such a warrant is legally defective since it alleges a crime on a date when no crime existed. That said warrant was issued on the 15th day of June, 1974 for a fugitive

from justice by the name of CHARLES SPATARO on the 15th day of June, 1974. That a CHARLES SPATARO was on temporary absence in accordance with Canadian law on that date.

10) That a further example of a lack of competent legal evidence was that the complaint was at variance with the evidence as presented at the hearing by affidavits. That the complaint charged the petitioner with committing arson in Canada, that the evidence talked of attempted arson. That said variance is serious enough that no reasonable ground can be found to believe the petitioner guilty of the acts charged.

11) Also the evidence never established that a crime was committed in Canada. That in order to be extradited a court must find that a crime was committed in the jurisdiction of a country in which the United States has a treaty with calling for such extradition. It was never established that any crime was committed within Canada.

12) Because of these reasons shown the continued detention of the petitioner is illegal and void and without warrant of law.

13) That a Writ of Habeas Corpus should issue out of this court to the United States Marshall for the Western District of New York commanding him to produce the body of the petitioner before this court on *April 15, 1975 @ 10:00 AM*, together with the cause of his imprisonment and detention.

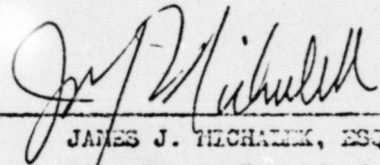
14) That a Writ of Certiorari should issue to the HONORABLE JOHN T. CURTIN, United States District Judge for the Western District of New York, commanding him to certify to said complaint, warrants and all proceedings had before him and return these proceedings and all orders, papers, briefs, and testimony of every nature had or used before him at such



time and place as this honorable court may decree.

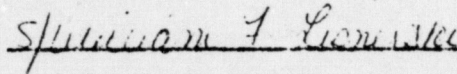
WHEREFORE, your deponent on behalf of the petitioner CHARLES ANGELO SPATARO, makes this petition for a Writ of Habeas Corpus and for a Writ of Certiorari as well as a stay against his removal from this court's jurisdiction, as well as for such other and further relief that this court deems just and proper.

DATED: Lackawanna, New York  
April 10, 1975



JAMES J. MICHALEK, ESQ.  
Attorney on Behalf of  
CHARLES ANGELO SPATARO,  
Petitioner

Subscribed and sworn to before  
me this 10th day of April, 1975.



WILLIAM F. LISNERSKI  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires March 30, 1976

UNITED STATES DISTRICT  
COURT  
SOUTHERN DISTRICT OF NEW  
YORK  
ROCKAWANA, NEW YORK

CHARLES AUGUSTO KELLER

Defendant

-VS-

UNITED STATES MARSHAL, FOR  
The Southern District of  
New York  
New York

RETURNED BY MAIL OF  
FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE

DATE: ROCKAWANA, N.Y.  
APRIL 14, 1975

LAW OFFICES OF  
JAMES J. MICHALEK  
561 RIDGE ROAD  
ROCKAWANA, NEW YORK 14218  
PHONE 826-6150



## United States District Court

FOR THE

WESTERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 75-130

CHARLES ANGELO SPATARO

vs.

UNITED STATES MARSHAL FOR THE WESTERN  
DISTRICT OF NEW YORK

JUDGMENT

#17

This action came on for ~~XXX~~ (hearing) before the Court, Honorable John T. Curtin  
, United States District Judge, presiding, and the issues having been duly  
(heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the Petition for Writ of Habeas Corpus  
and for a Writ of Certiorari be denied and it is further

ORDERED that the record In the Matter of the Extradition of  
CHARLES ANGELO SPATARO, fugitive from the Justice of Canada,  
Misc. Criminal 147 become part of the record herein and it is further

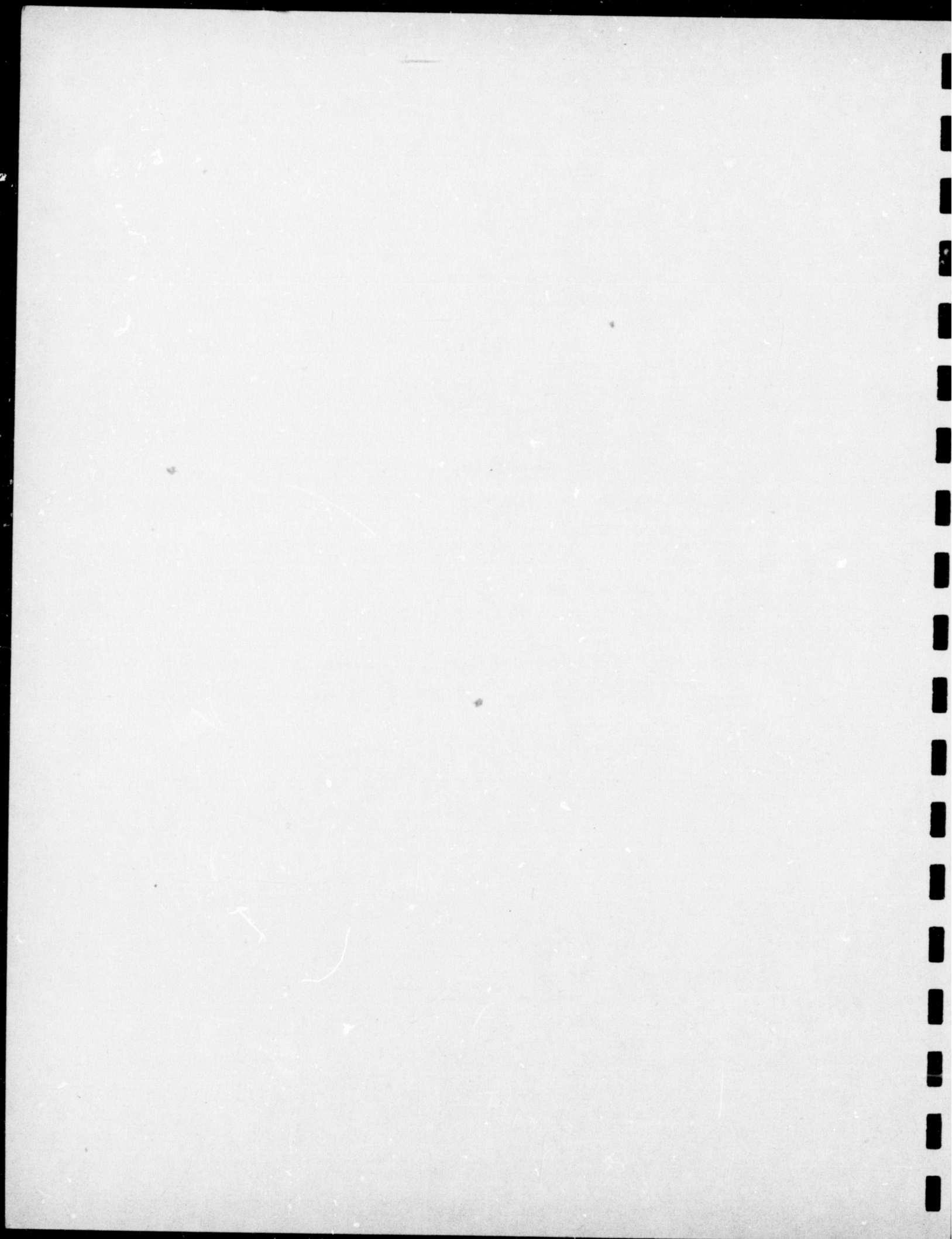
ORDERED that the extradition of CHARLES ANGELO SPATARO be stayed  
for a period of ten days from the date of the order filed on  
April 28, 1975.

Dated at Buffalo, New York  
of April , 1975 .

, this 28th

JOHN K. ADAMS  
Clerk of Court

EXHIBIT IX





AFFIDAVIT OF SERVICE BY MAIL

State of New York )  
County of Genesee ) ss.:  
City of Batavia )

Docket No. 75-8116  
U. S. ex rel Charles A. Spataro  
vs.  
U. S. Marshal for the Western  
District of New York

I, Leslie R. Johnson being  
duly sworn, say: I am over eighteen years of age  
and an employee of the Batavia Times Publishing  
Company, Batavia, New York.

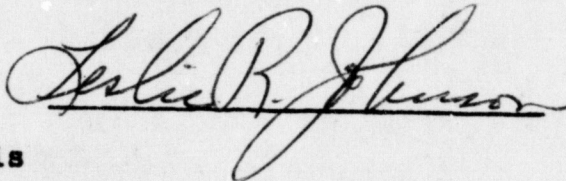
On the 16th day of June, 19 75  
I mailed 2 copies of a printed Briefs in  
the above case, in a sealed, postpaid wrapper, to:

James J. Michalek Esq.  
561 Ridge Road  
Lackawanna, New York 14218

at the First Class Post Office in Batavia, New  
York. The package was mailed Special Delivery at  
about 4:00 P.M. on said date at the request of:

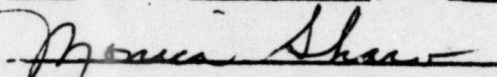
Richard E. Mellenger, Asst. U. S. Attorney, 502

U. S. Courthouse, Buffalo, N.Y. 14202



Sworn to before me this

16th day of June, 19 75



MONICA SHAW  
NOTARY PUBLIC, State of N.Y., Genesee County  
My Commission Expires March 30, 1977